

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 LUIS GAYTAN,) Civil No. 07cv2353 L(BLM)
12 Plaintiff,)
13 v.) **ORDER SETTING BRIEFING
14 CITY OF BRAWLEY, OFFICER
TORRES,) SCHEDULE AND VACATING
15 Defendants.) PRETRIAL CONFERENCE**
16 _____)

17 In this action for alleged violation of rights under the federal and California constitutions
18 and under California tort law, Defendants filed a motion for summary judgment. Plaintiff failed
19 to timely oppose. In the interests of justice, the time for Plaintiff to file his opposition is
20 extended.

21 On February 4, 2009 a day after his opposition was due, Plaintiff filed an ex parte
22 application seeking an extension of time of at least a week due to computer problems. On
23 February 9, the court granted the application and extended the time by one week. Nevertheless,
24 Plaintiff did not timely file his opposition. On February 10, Plaintiff sent an e-mail to the court's
25 official e-file mail box indicating he needed more time. Defendants used the same method to
26 respond. Both parties were admonished for the inappropriate use of the court's e-file mail box.
27 (See order dated Feb. 13, 2009.) On February 10, 2009 Plaintiff also left a voice mail for the
28 court staff complaining that the extension of time was not long enough. Although staff returned

1 his call, Plaintiff was not available and did not call the court until next day, February 11. He was
 2 instructed that if he desired to obtain another extension of time, he must file an ex parte
 3 application and show good cause. Plaintiff did not do so. Instead, the following day he filed his
 4 opposition papers. They were rejected and stricken from the record as untimely, lacking proper
 5 signature and including illegible exhibits. (*See* docket entries no. 30 & 33.)

6 When a party wants to extend a due date which has already passed, the request must be
 7 made by a motion. Fed. R. Civ. Proc. 6(b)(1)(B). Since Plaintiff has realized that the initial
 8 extension of time was insufficient until this date, Plaintiff has not filed a motion to extend time
 9 for his opposition. Plaintiff is not entitled to an extension and the court could consider
 10 Plaintiff's opposition waived. *See* Civ. L. Rule 7.1(f)(3)(c). Nevertheless, because at issue is
 11 summary judgment, the court grants Plaintiff one last opportunity to file his opposition.

12 Accordingly, **IT IS HEREBY ORDERED** as follows:

- 13 1. No later than June 22, 2009 Plaintiff shall file his papers in opposition to Defendants'
- 14 motion for summary judgment. No further extensions of time will be granted.
- 15 2. No later than June 29, 2009 Defendants shall file their reply papers.
- 16 3. Upon the filing of the foregoing, the parties shall await further order of this court.
- 17 4. The pretrial conference currently set for July 6, 2009 is hereby **VACATED**. The
 18 parties shall obtain a new date for the final pretrial conference after they have received a
 19 decision on Defendants' summary judgment motion.

20 **IT IS SO ORDERED.**

22 DATED: June 15, 2009



M. James Lorenz
United States District Court Judge

24 COPY TO:

25 HON. BARBARA L. MAJOR
26 UNITED STATES MAGISTRATE JUDGE

27 ALL PARTIES/COUNSEL